

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

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**IN RE:**

**REVIEW OF NASHVILLE GAS  
COMPANY'S IPA RELATING TO  
ASSET MANAGEMENT FEES**

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T.R.A. DOCKET ROOM  
**DOCKET No. 05-00165**

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**CONSUMER ADVOCATE'S RESPONSE TO NASHVILLE GAS COMPANY'S  
REQUEST FOR DISCOVERY**

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Comes now Paul G. Summers, Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate" or "CAPD"), and hereby submits the following responses to Discovery Requests propounded by Nashville Gas Company ("NGC" or "Company").

**GENERAL OBJECTIONS**

1. The Consumer Advocate objects to the definitions and instructions contained in the data requests to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

2. The Consumer Advocate objects to the data requests to the extent they call for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. In particular, the Consumer Advocate objects to requests seeking its legal research related to pertinent statutes, rules, orders and case law. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate

obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's data requests to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's data requests to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to require the Consumer Advocate to respond or produce documents that are equally available to the Company.

6. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

7. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in this response in any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

8. The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting material and all such material "relied" upon will either be supplied or appropriate citations will be made at the time of filing or that the information will be in some manner submitted into the record by a party to this matter.

9. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

**DISCOVERY REQUEST NO. 1:** State the Consumer Advocate's position on the issue of whether asset management fees received by Nashville Gas should be included in Nashville Gas' Incentive Plan Account.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

The current incentive plan does not include asset management fees and, therefore, the inclusion of such fees would require a change to the plan. This has implications for retroactive rate-making. The Consumer Advocate is opposed to the inclusion of asset management fees in

NGC's Incentive Plan Account. If the TRA does choose to give money to NGC under this scheme, then the sharing amount of the fees should be more in line with the effort, risk and assets actually committed to asset management by the shareholders of NGC. In no case should the sharing arrangement give NGC more than ten (10%) percent of the fees.

**DISCOVERY REQUEST NO. 2:** With respect to the position stated in response to the foregoing discovery request:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

(a) Identify each and every factual basis relied upon by the Consumer Advocate in reaching such position;

**RESPONSE:** The Consumer Advocate's investigation and discovery is ongoing at present in this matter. A great deal rests on the responses provided to its discovery requests by NGC. The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting facts and material, and all such facts and material "relied" upon, will either be supplied or appropriate citations will be made at the time of filing of testimony, or that the information will be in some manner submitted into the record by a party to this matter.

The Consumer Advocate notes the importance of NGC's tariffs, the IPA, IPA rules and regulations, the docket establishing the IPA (TRA Docket No. 96-00805), audits of the IPA, the audit giving rise to this docket (TRA Docket No. 04-00290) and changing market conditions and business practices regarding NGC's capacity management operations — all of which indicate that there is no need to give NGC the subject fees. The Consumer Advocate reserves the right to

rely on any fact disclosed by any party in discovery. Additional material is submitted in electronic medium (an index of which is provided as Attachment 1).

(b) Identify each and every legal basis relied upon by the Consumer Advocate in reaching such position;

**RESPONSE:** The Consumer Advocate objects to this data request to the extent it calls for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. The Consumer Advocate objects to the request to the extent NGC is actually seeking to discover the mental impressions of legal counsel concerning the litigation.

(c) Identify each and every witness the Consumer Advocate intends to call to support such position; and

**RESPONSE:** The Consumer Advocate objects to this request. This request seeks information not discoverable pursuant to Tenn. R. Civ. P. 26.02(3)&(4). Without waiving this objection, the Consumer Advocate notifies the requesting party that the Consumer Advocate is still conducting its investigation in this matter and is awaiting responses to its discovery requests. Accordingly, witnesses have not yet been determined nor have they prepared their testimony for this case. If testimony is prepared and filed, it will be provided. This testimony will contain the identity of any expert witness, the subject matter regarding the issues addressed, the substance of the facts and opinions regarding the issues addressed and a summary of the grounds for each opinion.

The witnesses will likely come from the Consumer Advocate professional staff: Dr. Steve Brown, Terry Buckner, Mike Chrysler, and/or Dan McCormac. To the extent this request calls for anything more than the testimony and exhibits of Consumer Advocate expert witnesses, the

Consumer Advocate objects on the ground that it is overly broad and burdensome because any relevant information discoverable within the scope of Tenn. R. Civ. P. 26, as interpreted by the legal counsel at the TRA, will be provided in the pre-filed testimony which will be filed well in advance of the hearing on the merits. The Consumer Advocate anticipates that potentially the staff of the TRA and the employees and hired consultants identified in this docket by the parties involved may be witnesses.

(d) Identify each and every document relating to, or reviewed or relied upon in reaching, such position.

**RESPONSE:** The Consumer Advocate objects to the request because it is ambiguous, overly broad, unduly burdensome and is not likely to lead to the discovery of admissible evidence. For documents “relied” upon in support of its positions in respect to this docket, refer to Response 2(a). The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting documents and material, and all such documents and material “relied” upon, will either be supplied or appropriate citations will be made at the time of filing of testimony or that the information will be in some manner submitted into the record by a party to this matter. Without waiving its objections, the Consumer Advocate supplies copies of documents responsive to the request in electronic form (an index of which is provided in Attachment 1). Also, the Consumer reserves the right to rely on any document produced by any party in discovery.

**DISCOVERY REQUEST NO. 3:** State the Consumer Advocate’s position on what structure or structures for the sharing of savings as between the Company and ratepayers will be proposed by the Consumer Advocate in this docket for utilization under the Company’s Incentive Plan.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

See response to Discovery Requests No. 1 and 2.

**DISCOVERY REQUEST NO. 4:** With respect to the position stated in response to the foregoing discovery request:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

(a) Identify each and every factual basis relied upon by the Consumer Advocate in reaching such position(s);

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(b) Identify each and every legal basis relied upon by the Consumer Advocate in reaching such position(s);

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(c) Identify each and every witness the Consumer Advocate intends to call to support such position(s); and

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(d) Identify each and every document relating to, or reviewed or relied upon in reaching, such position(s).

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

**DISCOVERY REQUEST NO. 5:** Identify each and every change to Nashville Gas' Incentive Plan or Incentive Plan Account which the Consumer Advocate intends to or will propose in this docket.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

See response to Discovery Requests No. 1 and 2. Also, because the fees at issue are not included in the current incentive plan, no changes are needed to the incentive plan to support the Consumer Advocate's position on the threshold issue. If the Consumer Advocate does not prevail on this issue, it reserves the right to propose such changes.

**DISCOVERY REQUEST NO. 6:** With respect to each such change identified in response to the foregoing discovery request:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

(a) Identify each and every factual basis relied upon by the Consumer Advocate in proposing such change;

**RESPONSE:** See response to Discovery Requests No. 1, 2 and 5.

(b) Identify each and every legal basis relied upon by the Consumer Advocate in proposing such change;

**RESPONSE:** See response to Discovery Requests No. 1, 2 and 5.

(c) Identify each and every witness the Consumer Advocate intends to call to support such proposed change; and

**RESPONSE:** See response to Discovery Requests No. 1, 2 and 5.

(d) Identify each and every document relating to, or reviewed or relied upon in reaching, such proposed change.

**RESPONSE:** See response to Discovery Requests No. 1, 2 and 5.



**DISCOVERY REQUEST NO. 7:** To the extent not provided in response to the foregoing questions, identify each and every matter or issue about which the Consumer Advocate intends to present evidence or argument in this proceeding and the Consumer Advocate's position thereon.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

See response to Discovery Requests No. 1 and 2.

**DISCOVERY REQUEST NO. 8:** With respect to each matter, issue, or position identified in response to the foregoing discovery request:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

See response to Discovery Requests No. 1 and 2.

(a) Identify each and every factual basis relied upon by the Consumer Advocate with respect to such matter, issue, or position;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(b) Identify each and every legal basis relied upon by the Consumer Advocate with respect to such matter, issue, or position;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(c) Identify each and every witness the Consumer Advocate intends to call with respect to such matter, issue, or position; and

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(d) Identify each and every document relating to, or reviewed or relied upon by the Consumer Advocate with respect to such matter, issue or position.

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

**DISCOVERY REQUEST NO. 9:** With respect to each person you expect to call as a witness, including any expert witness, regarding this matter, state or provided:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

(a) The witness' full name and work address;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(b) The subject matter (or subject matters) about which the witness is expected to testify;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(c) The substance of the facts and opinions to which any expert is expected to testify;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(d) A summary of the grounds or basis of each opinion to which such witness is expected to testify;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(e) Whether or not the expert has prepared a report, letter, or memorandum of his/her findings, conclusions, or opinions;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(f) The witness's background information, including current employer, education, professional and employment history, and qualifications within the field in which the expert is expected to testify;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(g) An identification of any matter in which the expert has testified by specifying the name, docket number and forum of each such case, and the dates of the prior testimony;

**RESPONSE:** See response to Discovery Requests No. 1 and 2.

(h) The identity of all documents shown to, delivered to, received from, relied upon, or prepared by any expert witness related to the witness' expected testimony in this case.

**RESPONSE:** The Consumer Advocate objects to any request seeking all documents related to an issue, shown to, delivered to, received from, prepared by or reviewed by its witnesses. Such a request is ambiguous, overly broad, burdensome and is not likely to lead to the discovery of admissible evidence.

Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

The Consumer Advocate's investigation and discovery is ongoing at present in this matter. A great deal rests on the responses provided to its discovery requests by NGC. The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting documents and material, and all such documents and material "relied" upon, will either be supplied or appropriate citations will be made at the time of filing of testimony or that the information will be in some manner submitted into the record by a party to this matter.

The Consumer Advocate notes the importance of NGC's tariffs, the IPA, IPA rules and regulations, the docket establishing the IPA (TRA Docket No. 96-00805), audits of the IPA, the audit giving rise to this docket (TRA Docket No. 04-00290) and changing market conditions and business practices regarding NGC's capacity management operations — all of which indicate that there is no need to give NGC the subject fees. The Consumer Advocate reserves the right to

rely on any document disclosed by any party in discovery. Additional material is submitted in electronic medium (an index of which is provided as Attachment 1).

**DISCOVERY REQUEST NO. 10:** Identify all exhibits which the Consumer Advocate intends to introduce into evidence in the proceeding.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

The Consumer Advocate objects to this data request to the extent it calls for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. Further, it appears this request seeks items which are the work product of the Consumer Advocate. The Consumer Advocate objects to the request to the extent NGC is actually seeking to discover the mental impressions of legal counsel and/or the documents legal counsel might use at the hearing of this matter.

Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

The Consumer Advocate anticipates the written testimony submitted by its witnesses in this docket will be complete in the sense that all necessary supporting exhibits and material, and all such exhibits and material “relied” upon, will either be supplied or appropriate citations will be made at the time of filing or that the information will be in some manner submitted into the record by a party to this matter.

The Consumer Advocate notes the importance of NGC’s tariffs, the IPA, IPA rules and regulations, the docket establishing the IPA (TRA Docket No. 96-00805), audits of the IPA, the audit giving rise to this docket (TRA Docket No. 04-00290) and changing market conditions and

business practices regarding NGC's capacity management operations — all of which indicate that there is no need to give NGC the subject fees. The Consumer Advocate reserves the right to utilize any document provided by any party in discovery as a potential exhibit. Additional material is submitted in electronic medium (an index of which is provided as Attachment 1).

**DISCOVERY REQUEST NO. 11:** Identify each and every communication with any member of the TRA Staff or any current or former member of the Advisory Staff regarding the matters set for hearing in the proceeding and with respect to each:

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

(a) State the subject and substance thereof;

**RESPONSE:** The Consumer Advocate objects to this data request to the extent it calls for information and the production of documents which are protected from disclosure by the attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection.

(b) Identify the date and means thereof; and

**RESPONSE:** See response to Discovery Request No. 11(a).

(c) Identify each and every document in the possession, custody, or control of the Consumer Advocate evidencing, relating or referring thereto.

**RESPONSE:** See response to Discovery Request No. 11(a).

**DISCOVERY REQUEST NO. 12:** Produce a copy of all documents identified in response to the foregoing discovery requests.

**RESPONSE:** The Consumer Advocate objects to the request to the extent NGC is actually seeking to discover the mental impressions of legal counsel and/or the documents legal counsel

might use at the hearing of this matter.

Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

See response to Discovery Request Nos. 1 & 2. Also, see the documents provided in electronic form (an index of which is provided in Attachment 1).

**DISCOVERY REQUEST NO. 13:** Identify each and every person who provided information or participated in the preparation of the responses to these discovery requests and indicate which responses each such person worked on or provided information for.

**RESPONSE:** Subject to and without waiving any objections stated herein the Consumer Advocate responds to the specific request as follows:

Joe Shirley, Steve Butler, Dan McCormac, Mike Chrysler, Dr. Steve Brown, and Tim Phillips worked as a team to respond to the entire set of discovery requests.

Respectfully submitted,



JOE SHIRLEY, B.P.R. # 022287  
STEVE BUTLER, B.P.R. #014772  
Assistant Attorney General  
Office of the Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615) 741-3533

Dated: December 14, 2005

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing has been served via the methods indicated on this 14th day of December, 2005, to the following:

Via first-class U.S. mail, postage prepaid:

James H. Jeffries IV, Esq.  
Moore & Van Allen  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28202-4003

Via hand delivery:

R. Dale Grimes, Esq.  
Bass, Berry & Sims, PLC  
2700 First American Center  
Nashville, Tennessee 37238-2700

Aaron Rochelle, Esq.  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

A handwritten signature in cursive script, reading "Joe Shirley", written over a horizontal line.

JOE SHIRLEY  
Assistant Attorney General

90480

**FOLDER AND FILE INDEX OF DOCUMENTS PROVIDED ON COMPACT  
DISK SUBMITTED WITH CONSUMER ADVOCATE'S RESPONSE TO  
NASHVILLE GAS COMPANY'S REQUEST FOR DISCOVERY  
FILED AND SERVED ON DECEMBER 14, 2005**

**1. FERC Pipeline Customer Index Manuals.**

Folder Name And SubFolder Name (Following a "\\"):

*DocsFromSearchesOfFERC\_InternetSite\Ferc\_PipelineCustIndexManuals*

File Names: *549\_InstructionsManualForFerc index\_new.pdf*  
*549InstrucMnualindex.pdf*  
*InstrToReadCustomerIndexofPipee.pdf*

**2. Orders, Comments, and Testimony Filed Before FERC.**

Folder Name And SubFolder Name (Following a "\\"):

*DocsFromSearchesOfFERC\_InternetSite\OtherOrders\_Comments\_Testimonies*

File Names: *19990420-0108(13487171).pdf*  
*19990504-0257(1494272) PiedmontDenied.wpd*  
*20000502-1110(986116)TexasGasTrans.tif*  
*20020530-2047(1242292)FERCStaffpaper.wpd*  
*20021017-0225(11196838)NashvilleGas.pdf*  
*20030522-4000(7152614) Trans.doc*  
*20030606-0018(7896611)GTI.pdf*  
*20030930-0573(4001815)SurveryData.doc*  
*20031125-0462(4638971)FinalRule\_Conduct.doc*  
*20040326-5016(5411836)Pd\_PriceDiscovery.doc*  
*20040505-4000(5695001)PriceIndicesReport.ppt*  
*20040505-4040(5704725)FercIndexReport.doc*  
*20040505-4067(5706403)PriceIndexReportAppendix.pdf*  
*20040916-3018(6425722)PriceIndexErrata.pdf*  
*20050715-5087(11202612)PD Motion.pdf*  
*20050729-0117(11608904)ScWaiver.pdf*  
*20050909-0033(13083043)GasForPwrPlnt\_Piedmont.pdf*  
*20050919-5066(13256381)LNGCoalition.pdf*  
*20051012-4006(13717826)Trans.doc*  
*20051012-4006(13824673)Trans.pdf*  
*ScanaAssetMgr20021203-3079(2247160).doc*



**3. Documents Relating To FERC Rulemakings Regarding Capacity Release.**

Folder Name And SubFolder Name (Following a "\"):

*DocsFromSearchesOfFERC\_InternetSite\RM98-10-000*

File Names: *CapIT\_src.htm*  
*DynerysComments.tif*  
*FinalOrder.wpd*  
*Order 20000210-3080(1547085).wpd*  
*Ordre2004\_StrdOfconduct20031125-0462(4638971).doc*  
*Piedmont220000210-3080(1547085).wpd*  
*Piedmontsubmits-3-19990422-0132(517622).tif*  
*Piedmontsubmits\_1\_19990422-0132(517622).tif*  
*Rulemaking-19980730-3134(1616446).wpd*  
*SrtandardOfconduct 20010927-3057(1586894).wpd*  
*TaggedImmimage19990422-0127(542785)[1].tif*

**4. Other Documents.**

Folder Name And Sub Folder Name (Following a "\"): *OtherDocs*

File Names: *AGL - Amended GA. Final Order 18437-U (Sequent).pdf*  
(Final Order in Georgia Docket No. 18437-U-AGL 2004-2007 Capacity Supply Plan)

*Asset Mgr. Payments.doc*  
(Nashville Gas Incentive Plan Account Payments 1999-2003)

*Copy of 1995\_NC Order.pdf*  
(Order in North Carolina Docket G100, Sub. 67)

*NGC Supply Plan 2004.pdf*  
(North Carolina 2004 Three-Year Supply Plan Update)

*Sequent Energy Mgt. Virginia Settlement Agreement.pdf*  
(Report Re: Investigation of Gas Supply Asset Assignment and Agency Agreement Between Virginia Natural Gas, Inc. and Sequent Energy Management, LP in PUE-2004-00111)

*Tuminello-Sequent Energy.pdf*  
(Presentation Before Ohio Public Utility Commission Conference By Peter Tuminello, Sr. V.P. Asset Management and Organization)

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